WORKING PAPER SERIES

Document Nº 187
Territorial Cohesion for Development Working Group

Devolution and territorial development inequalities: The Kenyan experience

Peter Wanyande

June 2016

AÑOS
RIMISP
Centro Latinoamericano para el Desarrollo Rural

An earlier version of this document was prepared for presentation at the International Conference on Territorial Inequality and Development (Puebla, Mexico, January 25-27, 2016) hosted by the Territorial Cohesion for Development Program of Rimisp – Latin American Center for Rural Development and sponsored by the International Development Research Centre (IDRC, Canada).

Citation

Wanyande, Peter. 2016. Devolution and territorial development inequalities: The Kenyan experience. Working Paper Series N° 187. Rimisp, Santiago, Chile.

Author:

Peter Wanyande, Department of Political Science and Public Administration, University of Nairobi, Kenya.

Email: pwanyande@yahoo.com

Rimisp in Latin America www.rimisp.org

Chile: Huelén 10, piso 6, Providencia, Santiago, Región Metropolitana
| Tel. (56-2)2 236 45 57 / Fax (56-2) 2236 45 58
Ecuador: Pasaje El Jardín N-171 y Av. 6 de Diciembre, Edificio Century Plaza II, Piso 3, Oficina 7, Quito
| (593 2) 500 6792
México: Yosemite 13 Colonia Nápoles Delegación Benito Juárez, México, Distrito Federal
| Tel/Fax (52) 55 5096 6592
Colombia: Calle 75 No 8 - 34 piso 2, Bogotá
| Tel. (57-1) 3837523

TABLE OF CONTENTS

ABSTRACT 1

1. INTRODUCTION 2

2. OBJECTIVES OF THE PAPER 2

3. THE ARGUMENTS 3

4. HISTORICAL CONTEXT OF REGIONAL INEQUALITY IN KENYA 3

5. THE CONSTITUTION OF KENYA 2010 AND DEVOLUTION OF POWER 9

6. ADDRESSING HORIZONTAL INEQUALITIES THROUGH DEVOLUTION 9

7. EFFECTIVENESS OF THE CONSTITUENCY DEVELOPMENT FUND (CDF) 10

8. CONSTITUTIONAL PROVISION FOR ADDRESSING REGIONAL INEQUALITIES 11

9. ASSESSING THE EFFECTIVENESS OF DEVOLUTION AS A SOLUTION TO ETHNO-REGIONAL INEQUALITY 13

CONCLUSION 14

Devolution and territorial development inequalities: The Kenyan experience

ABSTRACT

Present day Kenya became a British colony at the conclusion of the Berlin Conference of 1884/1885. Initially a company, the Imperial British East African Company, administered the colony on behalf of the British government. The colonial state was to all intents and purposes not a developmental state. It adopted policies geared towards extracting as much resources from the people as it could without investing the same in the social and economic development of the indigenous people. The state spent its energies developing regions occupied by British colonial settlers. The result was that some regions of the country developed while others stagnated or experienced underdevelopment. While poor people are found in both the developed and the disadvantaged regions, the severity of poverty was harsher among the people in the disadvantaged regions.

This is what the postcolonial government inherited at independence in 1963. Policies and initiatives introduced by the postcolonial state did not reverse the regional inequalities. The relatively more developed regions continued to receive more development resources than the poorer regions. These disparities were extended to the political sphere as well. This led to both political and economic discontent among the disadvantaged regions and communities. There was a feeling that centralization of power and resources was largely to blame for the regional development inequalities.

To address these inequalities, Kenya adopted a constitution in 2010 that introduced a devolved system of government consisting of one national government and 47 county governments. The constitution provides for the allocation of financial resources to county governments and authorizes these governments to raise their own revenue through specified taxes. The constitution further provides for an equalization fund intended to enable hitherto disadvantaged regions to "catch up" with the more developed regions.

This paper will identify the nature and consequences of these inequalities and attempt to answer the questions: based on Kenya's experience thus far, is devolution the panacea to regional development inequalities in Kenya? What challenges have emerged and therefore what other interventions are required to address the challenges? The paper, in short, assesses the impact, if any, of devolution of power, resources and functions on regional development inequalities in Kenya.

1. INTRODUCTION

Kenya is not just a developing country but is also one of the most unequal societies in the world[1]**.** Inequality[2] in Kenya as indeed is the case in other countries has vertical as well as horizontal dimensions. The population living below the poverty line by 2013 stood at 45.2 percent[3]. Today those living below the poverty line stand at 43 % of the population. In the Kenyan context, inequality has also taken ethno-regional dimensions with some regions and the communities living in those regions being better off than others. This has at times created political tensions between ethnic groups. Boundaries of all provinces (and districts) were drawn on the principle of ethnic by British colonial officers. The current constitution adopted the 1963 district boundaries for counties- thus incorporating- though perhaps not consciously, the ethnic factor in devolution[4]. These tensions have been severe especially when the regions from which the top political leadership hails receive more development resources than the rest. It is noteworthy however that inequality exists even within regions and within communities. This means that even within the rich regions including those from which the top political leadership hails have inequalities.

There are also huge socio-economic disparities between rural and urban areas of the country and inequalities within rural and within urban populations. These disparities continue to exist despite public statements by successive post colonial governments that they are committed to riding the country of the inequalities. In the 2010 constitution the government sought to address issues of vertical inequality by establishing the Salaries and Remuneration Commission (SRC). The mandate of the SRC is to, among other responsibilities, advice the national and county governments on the harmonization, equity and fairness of remuneration for public sector employees with the objective of reducing the huge income disparities in the public sector. This was an admission that inequality remains a major economic and political challenge in the country. The constitution of Kenya 2010 also provides for an Equalization Fund aimed at enabling those regions and communities that had hitherto been economically marginalized to "catch up" with those regions that had been advantaged.

2. OBJECTIVES OF THE PAPER

This paper attempts to explain the cause of ethno-regional economic, social and political inequalities and marginalization in Kenya. It further seeks to interrogate the assumption that the recently introduced devolved system of government would adequately solve these challenges in the country. The paper begins by providing the historical context of ethno-regional inequalities in Kenya. It then goes on to show how the post colonial regimes perpetuated these inequalities leading to demands by citizens for a governance system that would rid the country of the inequities in development by fostering equitable and fair development. These demands led to the adoption of the constitution of Kenya 2010 whose nerve centre is a devolved system of government. In this regard our focus will be on the extent to which the inequality reducing measures provided for in the constitution of Kenya 2010 are being or will be implemented. The discussion will therefore cover the progress made so far and the challenges and obstacles that the implementation of the devolved system of government has experienced since its

---

[1] According to the World Inequality Statistics, Kenya was ranked 103 out of 169 countries making it the 66th most unequal country in the world. (Quoted in KNBS and SID Report on Exploring Kenya's inequality. Pulling Apart or Pooling Together? 2013).

[2] By inequality we mean disparities in the distribution of resources among individuals and groups in society which results in differential access to opportunities and conditions that would improve the welfare of the individual and or group. There are at least three dimensions of equality in this sense; one is legal equality which refers to a practice in which all are treated equally before the law. Then there is political equality which occurs when every person or group is accorded same opportunity to exercise his or political right. The third is economic equality by which is meant a practice in which economic resources are distributed fairly to all members of society.

[3] Exploring Kenya's inequality Pulling Apart or Pooling Together? A publication of KNBS and SID, 2013. p50

[4] Yash Pal Ghai. 2015. Comparative Theory and Kenya's Devolution. In Bosire Cand and Gikonyo Wanjiru (ed.) Animating Devolution in Kenya. The Role of the Judiciary. A joint Publication of IDLO, JTI and Katiba Institute.

adoption in March 2013. These challenges and obstacles may make it difficult for devolution to solve the challenges of ethno-regional inequality in Kenya.

3. THE ARGUMENTS

The paper presents three main arguments. First is that regional inequality and underdevelopment in Kenya has been the result of two interrelated factors, namely public policies that clearly neglected some regions and communities and the pattern and distribution of political power which determines decisions on public spending on development. The policies that promoted ethno-regional inequality and marginalization in Kenya have their genesis in the colonial period. Secondly while the three successive post colonial regimes put in place measures aimed at addressing the problem, success has been limited. This is evidenced by the fact that the problem persists to date. One possible reason for the persistence of the problem could be that both the colonial and post colonial governments benefited from the inequalities and marginalization and therefore have little commitment to its eradication, the rhetoric to the contrary notwithstanding. While the colonial government reaped economic benefits from its discriminatory policies, the post colonial regimes reaped both political and economic benefits. Its solution will require political commitment underpinned by a strong belief, among the political leaders, in the values of equity, equality and fairness. It will also call for a radical change of the nature of Kenyan politics and how political power is used.

4. HISTORICAL CONTEXT OF REGIONAL INEQUALITY IN KENYA

Kenya became a British colony following the Berlin Conference of 1884/85 at which African counties were partitioned and apportioned to various Western European countries. The British colonial government practiced a deliberate policy of impoverishing the indigenous people while serving the economic and political interests of the colonialists. There were many reasons for this approach. To start with, it made it easier for the colonial government to control and exploit its subjects than would have been possible if the subjects were economically empowered. Colonial policy also facilitated the use of local resources including cheap African labour for the benefit of British economy. In this regard it is imperative to remember that the main objective and philosophy of colonial rule was to extract as much resources as possible from the colony for the development of the colonizing country.

The colonial government also took a deliberate policy decision to promote investment only in those areas of the country that had the potential for high returns to investment. Because agriculture was the mainstay of the colonial economy, regions and areas of the country with agricultural potential received more investment and resources compared to the rest of the country. Foreign companies, most of which were in the agricultural sector, also shunned the so called marginal areas of the country. Laws were enacted in the agricultural sector to “aid white settlers, and disempower the natives”, the result of which was ‘exacerbated inequality in opportunities and outcomes’ which laid the foundation for inequalities in Kenya.[5]

Regions such as Northern Kenya that did not offer any economic benefits did not receive meaningful investment including roads. The railway line from the coastal port town of Mombasa to the border with Uganda defined and largely determined areas of investment. As observed by Kodhek, the need to cover the cost of the Kenya-Uganda Railway led to two major settlement programmes (in 1920 and 1946) for British ex-servicemen who became producers of export commodities, primarily wheat, coffee and tea. These producers were supported by a system of preferential tax policy and protection from African competition, large public investments in infrastructure, training, research and extension[6].

[5] Gem Argwings Kodhek. 2006. An Inequality and Welfare analysis of Kenya’s Agricultural Sector, in SID Readings on inequality In Kenya.Volume 1.

[6] Gem Argwings Kodhek. 2006. Op. cit.

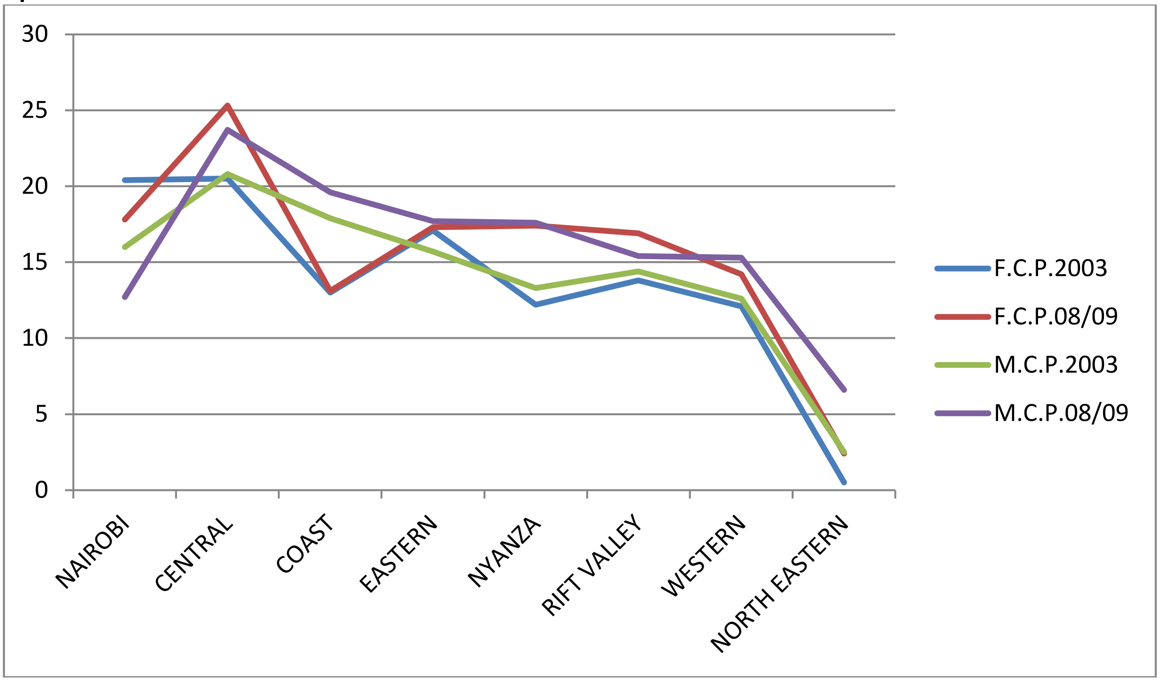
The colonial government also practiced a measure of discrimination in recruitment of Africans into public service jobs. Some communities did not get any opportunity to work in the colonial government. Those African who were recruited into the colonial service were at the bottom of the scale. In addition to these injustices, the colonial government denied Africans political, social and economic rights. Africans were neither represented in the colonial legislature nor were they allowed to vote. Social facilities such as health care and education for Africans were of inferior quality and few in number compared to those provided to the British settlers. All these injustices were carried out against the Africans despite them being in the majority and being the legitimate owners of the country. There was thus a confluence between the political and economic interests of those in power that produced the inequalities during the colonial period. Unfortunately these injustices and especially the colonial development agenda took an ethnic dimension for reasons given above.

It was against this backdrop that Africans began to agitate for independence. The struggle began in the 1920s and intensified after the Second World War. The struggle bore political fruits when Kenya gained political independence in 1963. The independence constitution provided for a multiparty political system and two levels of government, namely the central and the regional governments and a bicameral legislature. Each region of the country had its own legislative assembly. Each regional government had an executive arm. The judiciary served both the regional and the central government. The regional governments enjoyed substantial political space and power and administrative autonomy from the centre. Although Kenyans shied away from referring to this as a federal system, it had all the features of a federal government[7]. The citizens had hoped that all the undemocratic practices of the colonial era would not be experienced in independent Kenya. They had hoped that discriminatory treatment of citizens would certainly end. On this basis all Kenyans were united. There was a strong sense of nationalism across the numerous ethnic groups and regions of the country. The political leadership on its part promised to fight poverty, disease and ignorance that had ravaged the country. These promises were however short lived. Barely two years after independence the political leadership began to dismantle the constitution and especially its democratic provisions. This was achieved through various constitutional amendments. By the 1970s the country had to all intents and purposes reverted to a colonial type of governance style. Power was centralized in the presidency. Gradually Kenya became a one-party state, first by practice and eventually by law. Major political and economic decisions including the allocation of development resources were made at the centre. Regions and ethnic communities that did not toe the dominant political line were punished by being denied development resources. By the 1990s at the height of political dictatorship in the country, some regions were regarded as opposition zones and were not given an opportunity to develop. President Moi made this clear when he said "*Siasa Mbaya Maishsa Mbaya".* The literal translation of this Kiswahili phrase is "bad politics poor life". The result of this was continued marginalization of some regions and perpetuation of ethno- regional inequalities.

Figure 1 below gives an indication of regional inequalities many years after independence.

[7] See Yash Pal Ghai. 2015. Op.cit.

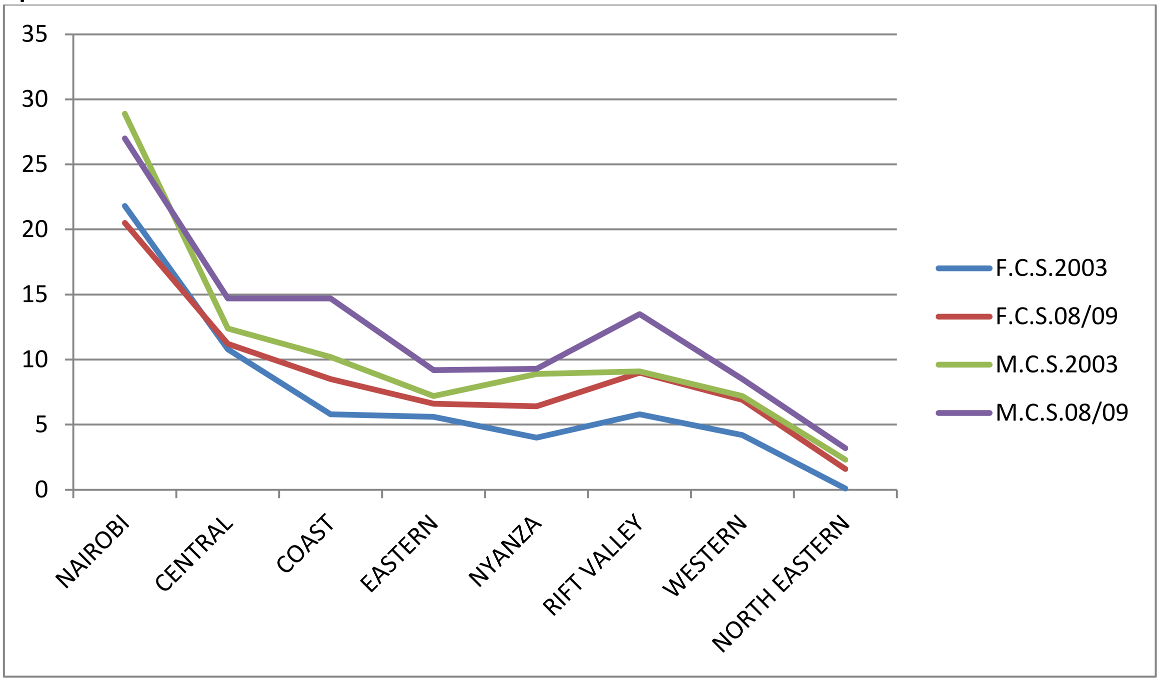
Figure 1. Percentage of pupils who have completed primary school in 2003 and 2008/2009 across provinces



Notes: F.C.P represents the percentage of female students who have completed primary school; M.C.P represents the percentage of male students who have completed primary school.
Source: Kenya demographic and health survey 2003 and 2008/2009

The data above shows that between 2003 and the 2008/2009 financial year, the North Eastern region lagged behind all other regions in terms of completion by pupils in primary school education. On average, arranging in an ascending order, North Eastern is followed by Western, Nyanza and Rift Valley, Coast, Nairobi and Central respectively. Central Province has the highest number of pupils completing primary school education for both genders. It is also worth noting that there is a wide gap between the worst performing region and the regions that precedes it, i.e. between North Eastern and Western of approximately 10.55%.

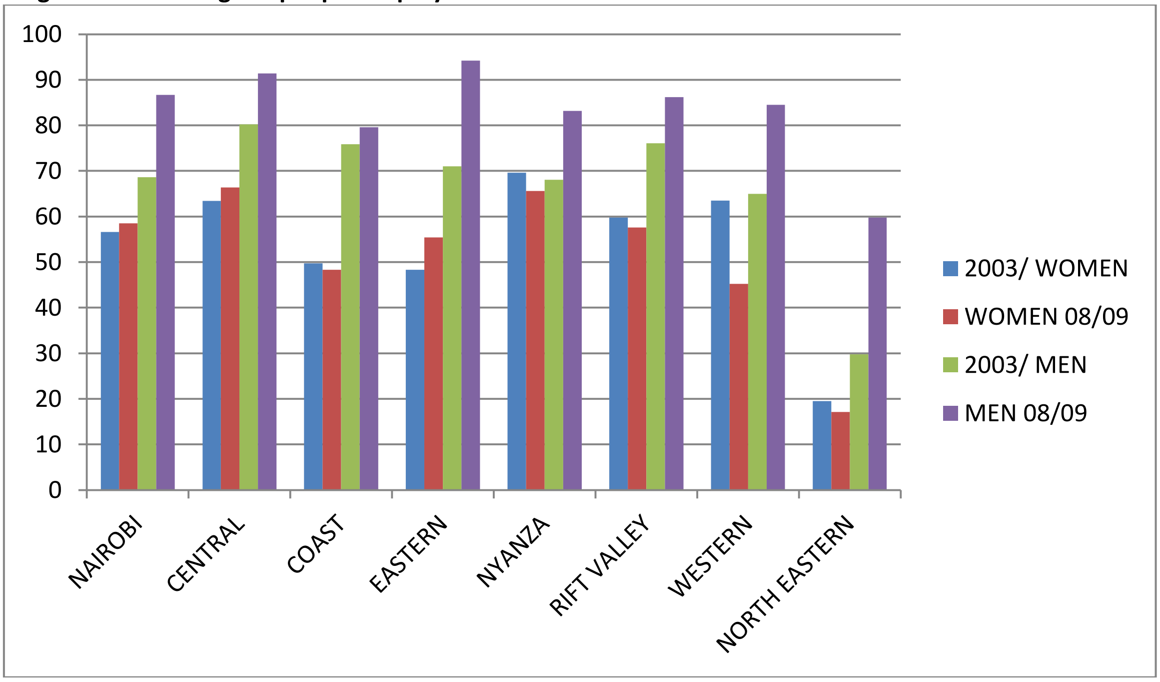
Figure 2. Percentage of pupils who have completed secondary school in 2003 and 2008/2009 across provinces



Notes: F.C.P represents the percentage of female students who have completed secondary school; M.C.P represents the percentage of male students who have completed secondary school.
Source: Kenya demographic and health survey 2003 and 2008/2009

The data above indicates that Nairobi is the leading region with the highest number of students completing secondary school level of education. Nairobi is followed by Central, Coast, Rift Valley, Eastern and Nyanza, Western and finally North Eastern regions. North Eastern is the weakest by 1.8% while Nairobi is the highest with 24.55%.

Figure 3. Percentage of people employed: 2003- 2009



Source: Kenya demographic and health survey 2003 and 2008/2009

Figure 3 above shows the percentage of women and men employed across the various provinces. The data covers the period 2003 and 2008/2009 financial years.

The data shows that North Eastern region has the least number of people employed from both genders, while Central has the highest number of people employed. On average, if arranged from ascending order, North Eastern is the weakest followed by Coast, Western, Eastern, Nairobi, Rift Valley, Nyanza and finally Central is the leading. North Eastern has the least people employed with an average of 31.55% while Central has the highest number of people employed with an average of 75.35%.

Table 1. Percentage with access to improved toilet facility

PROVINCES	% WITH ACCESS TO IMPROVED TOILET FACILITY
NAIROBI	42
CENTRAL	28.4
COAST	21.2
EASTERN	19.4
NORTH EASTERN	7.6
NYANZA	18.1
RIFT VALLEY	19.5
WESTERN	24.4

Source: Kenya population data sheet 2011

From data in Table 1 above, people living in Central province have access to improved toilet facilities by 28.4% while North Eastern is the province with the least access to improved toilet facilities by 7.6%.

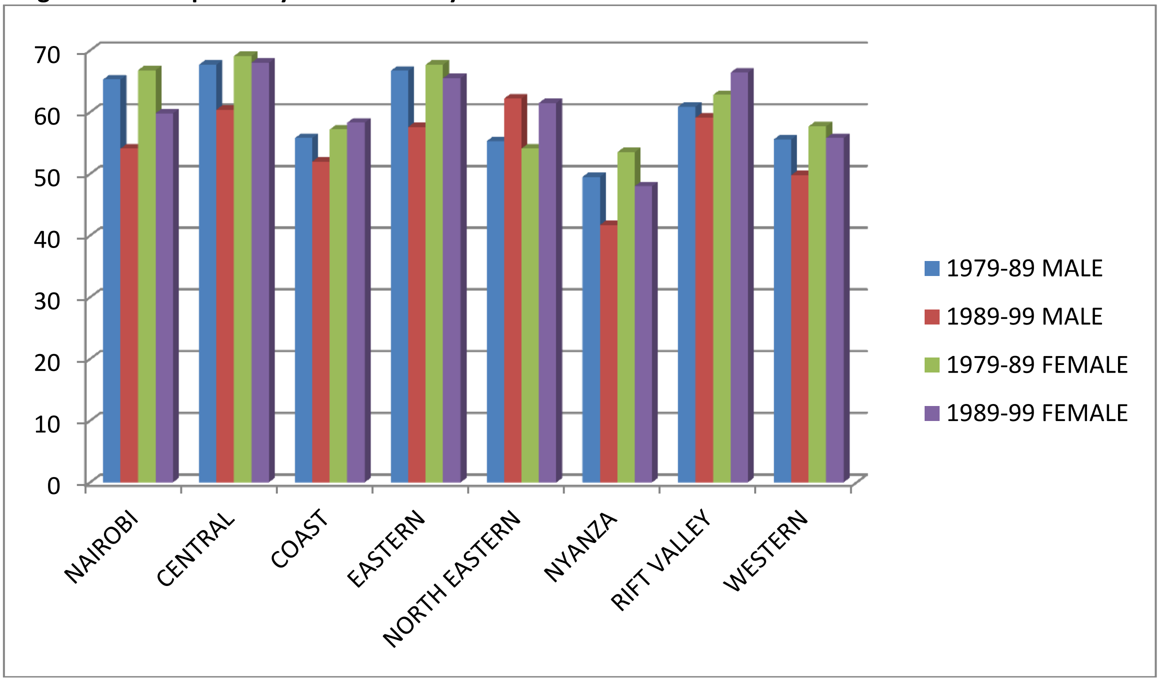
Table 2. Percentage with access to improved water source

PROVINCES	% WITH ACCESS TO IMPROVED WATER SOURCE
NAIROBI	95.5
CENTRAL	69.1
COAST	64.8
EASTERN	51.1
NORTH EASTERN	69.3
NYANZA	52.7
RIFT VALLEY	57.5
WESTERN	74.3

Source: Kenya population data sheet 2011

In the Table 2 above, Nairobi is the leading province with its residents having access to improved water source by 95.5%. The province with least access to improved water source is Eastern Province by 51.1%.

Figure 4. Life expectancy at birth and by sex



Source: Kenya 1999 Population and Housing Census; Volume V, Analytical Report on Mortality.

Life expectancy was assessed on both gender and data was collected for the period 1979 to 1989 and from 1989 to 1999.

On average, Central Province has the highest life expectancy with 66.3 while the province with the least life expectancy is Nyanza with 48.175. Details of the average are on the table below.

Table 3. Average life expectancy by province

PROVINCES	AVERAGE
NAIROBI	61.5
CENTRAL	66.3
COAST	55.825
EASTERN	64.375
NORTH EASTERN	58.275
NYANZA	48.175
RIFT VALLEY	62.3
WESTERN	54.725

On the basis of the various indicators shown above, it is clear that the province with the most favorable opportunities for development is Central, while North Eastern province appeared to be most marginalized.

Two observations are worth making about these regional inequalities. First is that it is not by chance or mistake that Central region of the country led in the development indicators shown in the data above. The first, third and fourth presidents of Kenya hailed from Central region of the country. There is a strong belief among Kenyans that these presidents used the state to favour this region. It has been a case of development following power. It is also worth noting that the second president hailed from the Rift Valley region. North Eastern region on the other hand is not only remote but also has a small population. From a political perspective this does not have much political value to those in power as their voting power is not significant. Nyanza region has also not been supportive of government during most of the independence period. Historically the colonial government did not pay developmental attention to North Eastern region of the country. Central region on the other hand was part of the white highlands and received a lot resource from the colonial government.

5. THE CONSTITUTION OF KENYA 2010 AND DEVOLUTION OF POWER

Against this background Kenyans began to agitate for a new approach to governance. At the minimum they wanted a return to multiparty democracy. This was achieved in 1992 when a combination of domestic political pressure and pressure from the international community led by donors and in particular the IMF and the World Bank for president Moi to re-introduced multiparty politics in the country. This was followed by demands for a new constitutional order. After many decades of government resistance Kenyans finally promulgated a new constitution, the Constitution of Kenya 2010 in August 2010. The devolved system of government was finally established following the general elections held on 4th March 2013. Kenyans felt that devolution would finally address issues of both political and economic marginalization and exclusion.

6. ADDRESSING HORIZONTAL INEQUALITIES THROUGH DEVOLUTION

The post colonial government inherited a state characterized by huge ethno-regional inequalities. One would have expected the African-led government to correct these imbalances in development for at least two reasons. First as one way of enhancing its legitimacy and secondly it would demonstrate governments break with the past. Indeed the independence constitution had provisions that if implemented would have corrected the defects of the inherited development imbalances. The successive post governments in Kenya also made several public statements about their commitment to the eradication of both vertical and horizontal inequalities. This commitment has also been expressed in a number of policy documents. The first indication of this commitment was found in the KANU[8] manifesto whose focus was the eradication of poverty, disease and ignorance, the major challenges facing the new nation. Other government policy documents in which issues of poverty reduction and elimination of inequalities are discussed, include the five-year National Development Plans, various sessional papers, special development programs against poverty including those aimed at the youth, gender and other forms of inequalities and other development strategies.

In 1965 the government published Sessional Paper N° 10 of 1965 on African Socialism and its Application to Planning in Kenya. This policy document was issued in response to growing discontent among Kenyans that the promises made to them during the struggle for independence were not honored. In particular there was discontent about the growing levels of poverty and income inequalities and the fact that this was taking an ethno-regional dimension. A close look at the paper however reveals a number of contradictions. While the paper talks about creating an equitable society, it also has provisions that when put in practice would clearly contradict this intention. For example the paper provides that: One of our problems is to define how much priority we should give in investing in less developed provinces - read regions. To make the economy as a whole grow as fast as possible, development money should be invested where it will yield the largest increase output. As Okello rightly observes, this approach clearly favours the development of areas having abundant natural resources, good land and rainfall, transport and power facilities and people receptive to and active in development[9]. It can only perpetuate inequalities**.**

In subsequent years the government experimented with many other development strategies aimed at addressing the growing socio-economic inequalities in the country. Among them was the introduction in

[8] KANU stands for Kenya African National Union, the political party that formed the first independent government after the 1963 general elections.

[9] Okello, D. 2015., Devolution and Kenya's Socio-Economic Development; a Political Economy Inquiry and Emerging Case Law. In Bosire, C. and Gikonyo W.(ed) Animating Devolution in Kenya. The Role of the Judiciary. A publication of IDLO , JTI and Katiba Institute.

1977 of the Special Rural Development Program; the District Focus for Rural Development Strategy in 1983; the Constituency Development Fund (CDF) and the Local Authority Transfer Fund (LATF) in 1988; and The Roads Maintenance Fuel Levy, among others.

The Constituency Development Fund (CDF) and Local Authorities Transfer Fund (LATF) represent the most significant response to political and societal pressure for a more equal share of development resources after independence. The CDF was introduced in Kenya in 2003 under an Act of parliament, the CDF Act 2003. The CDF Act provides that the government set aside at least 2.5% of its ordinary revenue for disbursement to all the constituencies[10] in the country under the CDF program. Three quarters of the amount is divided equitably between Kenya's 210 constituencies whilst the remaining 1/4th is divided based on a poverty index to cater for poorer constituencies. The objective of the Fund was to facilitate equitable distribution of development resources across regions and to control imbalances in regional development brought about by partisan politics. It targeted all constituency-level development projects, particularly those aiming to combat poverty at the grassroots.

7. EFFECTIVENESS OF THE CONSTITUENCY DEVELOPMENT FUND (CDF)

While many development projects such as water, schools and health facilities have benefited from CDF in different parts of the country, including areas that were underfunded whenever funds were allocated in national budgets[11], there are also many challenges associated with the Fund. These challenges have undermined the effectiveness of the Fund to achieve its original objectives. The major challenges are discussed below. A number of reports on the management of CDF indicate that the Fund was poorly managed and that corruption was ripe in the Fund. Secondly, the management of the Fund by MPs went against the principle of separation of powers between the executive and the legislature. The CDF was established by MPs and the general feeling in the country was that its management should not be in the hands of the same people who established it. The problem became even more acute when it emerged that in virtually every constituency, the MPs identified and went on to appoint either their relatives including their wives and in some cases their children as managers of the Fund.

Other challenges include low capacity of the committee members of both the CDF and the CDF project committees. A number of projects that are not related to the needs of the community for which they are intended have also been reported. This is caused mainly by the fact that communities hardly participate in critical stages of CDF projects. They are not given the opportunity to do so as the leaders make all the important decisions and expect the community to accept them. For political reasons and sometimes due to poor or no planning, MPs and CDF managers tend to spread the funds to too many projects. For example, a committee may put up one classroom in a school that needed four classrooms. Such projects have very little if any impact on development. Indeed there have been complaints that many CDF projects were not adequately funded and therefore could not be properly completed. These challenges were compounded by two other problems. CDF committees would fund new projects without considering on-going projects. The committee would also issue project completion certificates for poorly implemented projects.

Another challenge experienced in the management of CDF was the lack of effective oversight. The challenge had to do with the lack of capacity of the government to audit the accounts of the Constituency Development Fund. In fact CDF projects were hardly audited. This made it difficult to curb misuse of funds. They were also not closely monitored or evaluated. This combined to produce poor quality projects and misuse of funds. An equally serious challenge was the practice in which the Parliamentary CDF committee would overrule a project proposal by the CDF project committee or even the CDF committee itself. In some cases the parliamentary CDF committee would impose a project on a CDF committee even without the approval of the CDF board. The developmental impact of the Local Authorities Transfer Fund

[10] A constituency is the unit of parliamentary. Up to the 2013 general elections there were 210 parliamentary constituencies in Kenya but the number was increased to 290 representation after the promulgation of the Constitution of Kenya 2010 and took effect in the March 2013 elections.

[11] See Report of the CDF Board

(LATF) was also limited. It faced governance challenges similar of those of CDF including corruption and mismanagement.

One final observation we wish to make about the intervention to rid the country of regional inequality is this: While all the previous measures were mainly administrative and political in approach, CDF and LATF were attempts at fiscal decentralization. Two things need to be noted about these two measures. First is that they were introduced in response to the failure by previous efforts to reduce inequalities. Secondly while the CDF was managed by members of parliament, the LATF was under the management of local Authority councilor.

The failure of these interventions to bridge the ethno-regional inequality gaps led to increased political pressure for a new governance approach. Before attempting an explanation of the new approach to governance, a word about why these interventions failed would be useful**.** There are several reasons why the interventions failed to eliminate ethnic regional inequalities. Among them is the fact that the post colonial political leaders became mesmerized with power. The leadership of the country clearly focused on consolidating both political and economic power. They had no vision of what type of society they wanted to build or create. No wonder that sessional paper N^{o} 10 referred above, which was meant to spell out the type of society Kenya would be, was not developed until two years after independence. In any event it was developed in response to growing discontent about the way the country was being governed and in particular to the growing regional development inequalities. The ruling elite thus responded to what they considered a potential political threat to their power. It was meant to forestall a possible political revolt.

Under the pretext of fostering national unity and nation building, the political leaders suppressed and indeed criminalized any opinion that was not in conformity with the ideas of the ruling party. Nation building turned out to be no more than the consolidation of political and economic power of the ruling elite and their close allies. As Okello[12] rightly observes, the success of many government initiatives directed at eliminating inequalities was frustrated by the central government whose appetite for consolidation of political power under the guise of forging national unity, far exceeded its interests in creating an equitable society, which would have made this unity easier to achieve.

In its assessment report published in 2001 by the United Nations Development Programme (UNDP), Kenya identified several factors that limited the impact of these interventions on the elimination of inequality and on poverty reduction. The factors include the fact that these initiatives have largely been disjointed and spread over many programmes and projects competing for limited funds, lack of coordination among various actors, in addition to lack of, or inadequate participation by the poor and the vulnerable groups themselves. The report goes on to say that the intervention had limited impact because of government's failure to put in place policies that would ensure equitable distribution of income and wealth. These interventions have also suffered from implementation failures. According to the UNDP report, plan implementations have mainly suffered from policy gaps between broad national frameworks and routine sector actions and projects. Development plans have also tended to reflect preferences and have therefore been used as tools to attract development assistance rather than to reflect real commitment to solving development problems. Finally many of the initiatives have tended to aim at short-term solutions and responses rather than long-term sustainable development policy, a fact that limits their effectiveness and impact on socio-economic disparities[13].

8. CONSTITUTIONAL PROVISION FOR ADDRESSING REGIONAL INEQUALITIES

There are several provisions in the constitution of Kenya 2010 that seek to address the challenges of inequality in Kenya. To begin with one of the objectives of devolution is to ensure equitable sharing of

[12] Okello, D. 2015. Op.cit.
[13] UNDP, Human Development Report 2001. Addressing Social & Economic Disparities.

national and local resources throughout Kenya[14]. Another provision on devolution that has relevance to elimination of ethno-regional inequality is article 174(h) on the decentralization of state organs, their functions and services, from the capital of Kenya. The idea is to get rid of the centralization of power which Kenyans believe was a major cause of marginalization of some communities and regions of the country. This concern is reiterated in article 201(b) of the constitution as follows: the public finance system shall promote an equitable society and in particular (i) the burden of taxation shall be shared fairly; (ii) revenue raised nationally shall be shared equitably among national and county governments; and expenditure shall promote the equitable development of the country, including by making special provision for marginalized groups and areas. In article 201(d) it is stated that public money shall be used in a prudent and responsible way.

Among the key constitutional mechanisms for addressing regional inequality and marginalization in Kenya is the establishment of the Equalization Fund[15]. This Fund is intended to provide basic services including water, roads health facilities and electricity to marginalized areas to the extent necessary to bring the quality of those services in those areas to the level generally enjoyed by the rest of the nation, so far as possible. Unfortunately three years down the line, this Fund has not been used for the purposes for which it was established.

There are at least two reasons for this. The national Treasury at some point developed regulations to govern the management of this Fund. Before the regulations could be approved however, a member of parliament introduced a bill seeking to have the Fund managed as part of the CDF. The national assembly passed the bill. When the bill was presented before the Senate as required by law, the Senate rejected it as unconstitutional. Thus to date the Fund has not been disbursed to the marginalized areas. It is worth noting that the MPs are not in a hurry to have this bill revised precisely because they do not want this Fund to be controlled by any other institution but them. They are obviously willing to delay its revision until they find a way of controlling the Fund. The MPs have an interest in controlling the Fund for political reasons similar to those they had for controlling CDF. In this regard it is important to remember that the MPs have now passed a new law to enable them control the CDF. They will probably find a legal way of controlling the Equalization Fund.

Two further observations about the Equalization Fund are in order. First is that the establishment of the Fund is a clear admission by government that some regions of the country had been economically marginalized and underdeveloped in comparison to other regions. Put differently, its establishment is an admission by government that there are regional inequalities in Kenya that are serious enough to warrant addressing. Secondly the failure to utilize this fund two years after its establishment does not augur well for the efforts to bring about equitable development in the country. Finally the Fund targets services that are critical for empowering communities to improve their life chances and welfare. Lack of water is a major challenge and could easily result in diseases that are life threatening; electricity is also important for job creation while roads are critical for investments and access to markets and other services.

Another constitutional provision that would address inequality is the sharing of revenue between the national and county governments. The constitution provides that at least 15% of the nationally raised revenue be allocated to county governments every financial year. This would enable county governments to finance the functions allocated to the counties in the fourth schedule of the constitution. The exact amount to be allocated to counties would be determined by a revenue sharing formula developed by the Commission for Revenue Allocation (CRA). CRA is a constitutional commission established to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government – (a) between the national and county government, and (b) among the county governments.

While counties receive this revenue from the national treasury, there is discontent by county governments about (i) the manner in which the money is disbursed and (ii) the amount that is disbursed to counties in relation to the functions the counties are required to perform. County governments complain that the amount disbursed to them is too little to fund the many functions that are allocated to them. Consequently they have and continue to demand that the minimum revenue allocated to counties

[14] Article 174(g), The Constitution of Kenya 2010.
[15] Article 204, The Constitution of Kenya 2010.

be raised to 45% of the nationally raised revenue. County governments have found an ally in this battle from the Coalition for Reforms and Democracy (CORD). CORD is an alliance of opposition political parties. The Coalition plans to hold a referendum on the issue before the 2017 general elections. County governors have also indicated that they want the minimum share of the revenue to counties to be increased to at least 45% of the nationally raised revenue.

The constitution also provides that county governments may be given additional allocations from the national government's share of the revenue, either conditionally or unconditionally[16]. This fund could, if well used, assist poorer counties fund projects that may uplift the quality of life of the residents. Funds given to a county government conditionally must be used on a project identified by the national government or one that is agreed upon between the county and the national government. A county government receiving unconditional grant on the other hand can use the grant on any project of its choice. The point however is that if used well, the Fund can uplift the wellbeing of the recipient country.

Both the equalization Fund and the conditional and unconditional grants operate in the form of affirmative action as they are aimed at correcting imbalances that are not caused by the recipients of the funds.

9. ASSESSING THE EFFECTIVENESS OF DEVOLUTION AS A SOLUTION TO ETHNO-REGIONAL INEQUALITY

It may be too early to definitively conclude that devolution and its provision on marginalization and developmental exclusion will eradicate ethno-regional inequalities. This is because devolution has only been in place since March 2013. That is only three years of implementation. We can however make some preliminary observations based on the trends that have been observed in the short time the system has been in place. A number of observations can be made on this basis.

First is that for devolution to contribute meaningfully to the bridging of the gap between the rich and poor counties and regions, the system of government must first be successfully implemented. Failure to implement devolution would obviously mean that the provisions in the constitution for addressing inequalities would not be implemented. This to a large extent will depend on the extent to which the political leadership is committed to the system. The country's leadership must demonstrate their support for a society that is as egalitarian as it can be. In other words they must be ideologically supportive of devolution as a way of governing society and equality as the vision. Regrettably political leaders, especially at the national government level, have not demonstrated this commitment. The failure to utilize the Equalization Fund and to use to uplift the hitherto underdeveloped areas is a clear example of lukewarm support to the reduction of inequality. Secondly if we accept that a major cause of the inequalities has to do with the ethnic politics then this has to change before we can expect devolution and its provisions on inequality to have a positive impact on ethno-regional inequality; unfortunately there is no indication that ethnicity will cease to be a major determinant of development decisions in this country soon.

Another challenge to the implementation of devolution is the reluctance by politicians especially at the national level to relinquish substantial power to the county governments even though these powers are given by the constitution. Secondly the counties need to have a strong economic base to be able to carry out their respective functions. At the moment they rely too much on the revenue from the national government. Attempts by some counties to introduce additional taxes as a way of enhancing their economic viability have been opposed by residents on grounds that they are being over taxed. The national government has been quick to side with the people in such circumstances.

There have been numerous political conflicts and power struggles between members of the National Assembly and the governors and county governments generally. The nature of the conflicts is such that

[16] Article, 202 (2). Republic of Kenya. The Constitution of Kenya 2010.

they are clearly aimed at subverting the intentions of equity in resource use and allocation. The danger is that the conflicts have the potential of undermining the ability of devolution to promote equitable development across the country. We have already observed that members of the National Assembly are keen to control the Equalization Fund basically for personal political interests. If this were to happen the possibility of using this money to uplift the hitherto marginalized areas will be lost. Another challenge to the use of the Equalization Fund is the lack of consensus on the meaning of marginalized areas. There are two schools of thought in this regard. One school is of the view that only districts that were hitherto neglected in terms of development should qualify as marginalized. The other school argues that even within a developed county there may be marginalized areas that therefore should qualify for the Equalization Fund. The CRA has designated fourteen counties as marginalized and thus tending to be sympathetic to the first school of thought on this matter. This controversy needs to be addressed conclusively if progress is to be made with regard to the use of this Fund. The problem is that the constitution does not define a marginalized area although it provides that the Equalization Fund is to be used for marginalized areas. The constitution however defines marginalized communities and marginalized groups.[17] On the basis of this, one would be persuaded by the second school of thought. The Fund should in this case be used in any area with marginalized communities and clear disadvantages in service provision.

CONCLUSION

This paper had two objectives. First it sought to shed insights into the nature and causes of the ethno-regional inequalities in Kenya. Secondly the paper sought to assess the impact, thus far, that the devolved system of government has had on the efforts to eradicate these inequalities. We observed that the successive post colonial governments made several statements to the effect that they are committed to the eradication of these inequalities which they inherited from colonial rule. It was noted further that a number of efforts including the adoption of different strategies have been put in place to address the ethno–regional inequalities and that by 2010 these efforts had not had much impact. The latest and perhaps the most comprehensive strategy in this regard has been the adoption of a devolved system of government following the promulgation of the Constitution of Kenya 2010. This was done in recognition of the fact that past efforts had not succeeded in reducing both horizontal and vertical inequalities. The devolved system of government involves sharing governmental functions, power and resources between two levels of government created by the constitution. The constitution also establishes a Fund known as Equalization Fund to be given to the less developed communities which has been interpreted to mean less developed counties in an attempt to enable them to “catch up” with the more developed regions or counties. The implementation of this new system of government has unfortunately experienced many challenges. These challenges have also been experienced in the operationalization of the Equalization Fund. Indeed the Fund has yet to be disbursed to the less developed counties and communities. Put together the challenges may slow down and indeed have the potential to undermine the eradication of the inequalities that the country has grappled with since colonial times. It is generally accepted by Kenyans that what is lacking is political will to make the devolved system of government work. Many powerful people have vested interests in centralized power and are responsible for the challenges associated with efforts to implement the devolved system of government and therefore the fight against ethno-regional inequality in the country.

[17] See Article 260. The Constitution of Kenya 2010.